

REMARKS

Reconsideration of the rejections set forth in the Office Action mailed March 6, 2007, is respectfully requested. Claim 12 has been amended. Support for this amendment can be found in the specification at, e.g., page 2, lines 13-20; page 13, line 16 - page 14, line 7; and Figs. 13 and 14. Therefore, no new matter has been added with this amendment. Claims 12, 13, and 16-18 remain pending in this application.

Art Rejections

Claims 12, 13, and 18 were rejected under 35 U.S.C. § 102(b) as allegedly unpatentable over Baumgartner et al. (USP 5,702,454). Claims 16-17 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Baumgartner in view of Bao et al. (USP 5,192,326).

Applicant has amended claim 12 to require that “*no more than one implant*” is inserted into the defect in the annulus fibrosis. Baumgartner, by contrast, requires multiple implants be inserted into the disc space. (See, e.g., Col. 1, lines 41-48 “The object of the invention is to create a universal, simple to apply implant, which can be used as a support member for varied cavities formed at random. This object is achieved in accordance with the invention in that the implant contains at least three elastically deformable support members which can be inserted into the central cavity and can be positioned therein.” (emphasis added); see also the Abstract “An implant consisting of several support members (7), which are produced from an elastic plastic, is provided as a replacement for a part, which is no longer capable of bearing loads, or the core region of an intervertebral disk (3). The support members (7) are inserted one after the other into a central cavity (5)” (emphasis added))

In fact, Baumgartner believed there would be problems with using only a single implant. (See Col. 1, lines 30-36 “As the surgeon has to work with predetermined implant sizes, he is forced to produce a matching cavity in the core region of the intervertebral disk. The known implant requires a relatively expensive design of the hollow member, in order to guarantee permanent tightness against the egress or fluid, which is required if the implant is to work optimally.”). By requiring multiple implants, Baumgartner can fill cavities of varying size by simply inserting additional implants. Therefore, Baumgartner actually teaches away from the step of “*inserting no more than one implant into the defect in the annulus fibrosis*” as required by the amended claims.

Claim 12 is therefore patentably distinct from Baumgartner alone or in combination with Bao. Each of claims 13 and 16-18 are dependent on claim 12 and are therefore patentably distinct from Baumgartner and Bao for the same reasons applicable to claim 12. Therefore, Applicants respectfully request withdrawal of the rejection and reconsideration of the claims as amended.

For all the foregoing reasons, Applicant asserts the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant’s undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

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Respectfully submitted,
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